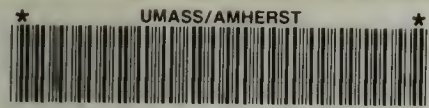


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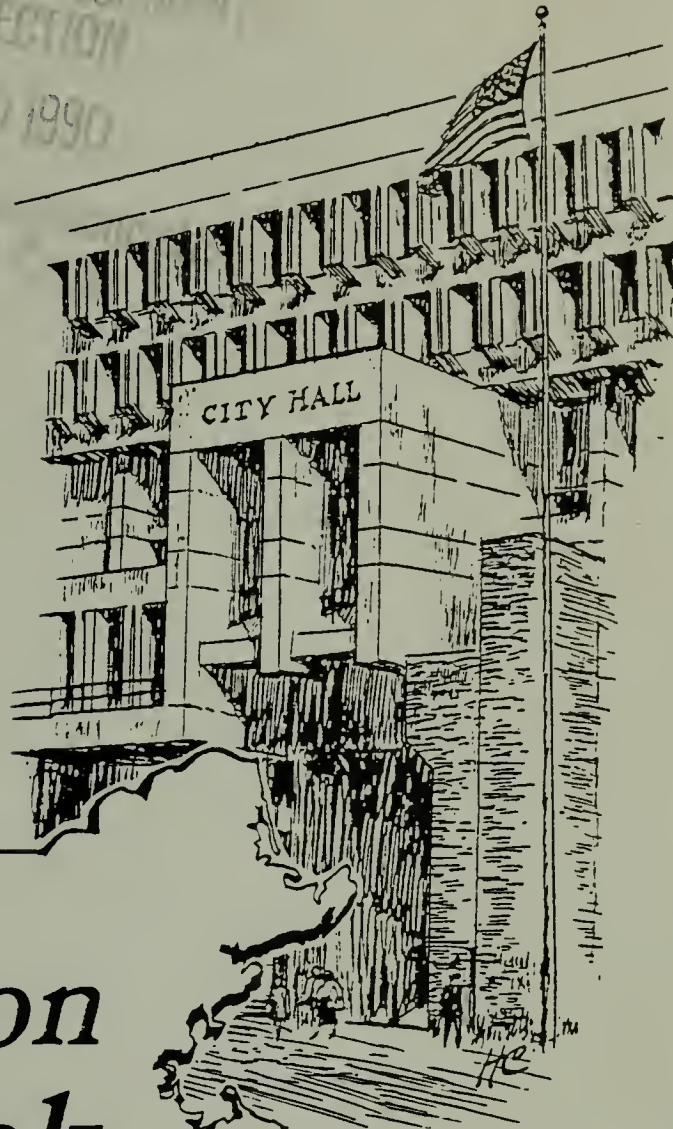


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UNIVERSITY OF MASSACHUSETTS
DEPARTMENT OF PERSONNEL ADMINISTRATION



A Certification Handbook

**Entry Level
Police Officer Appointments
Subject to Civil Service
(Castro v. Beecher)**



Department of Personnel Administration

**Prepared by:
The Division of Merit System Services**

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CERTIFICATION INSTRUCTIONS

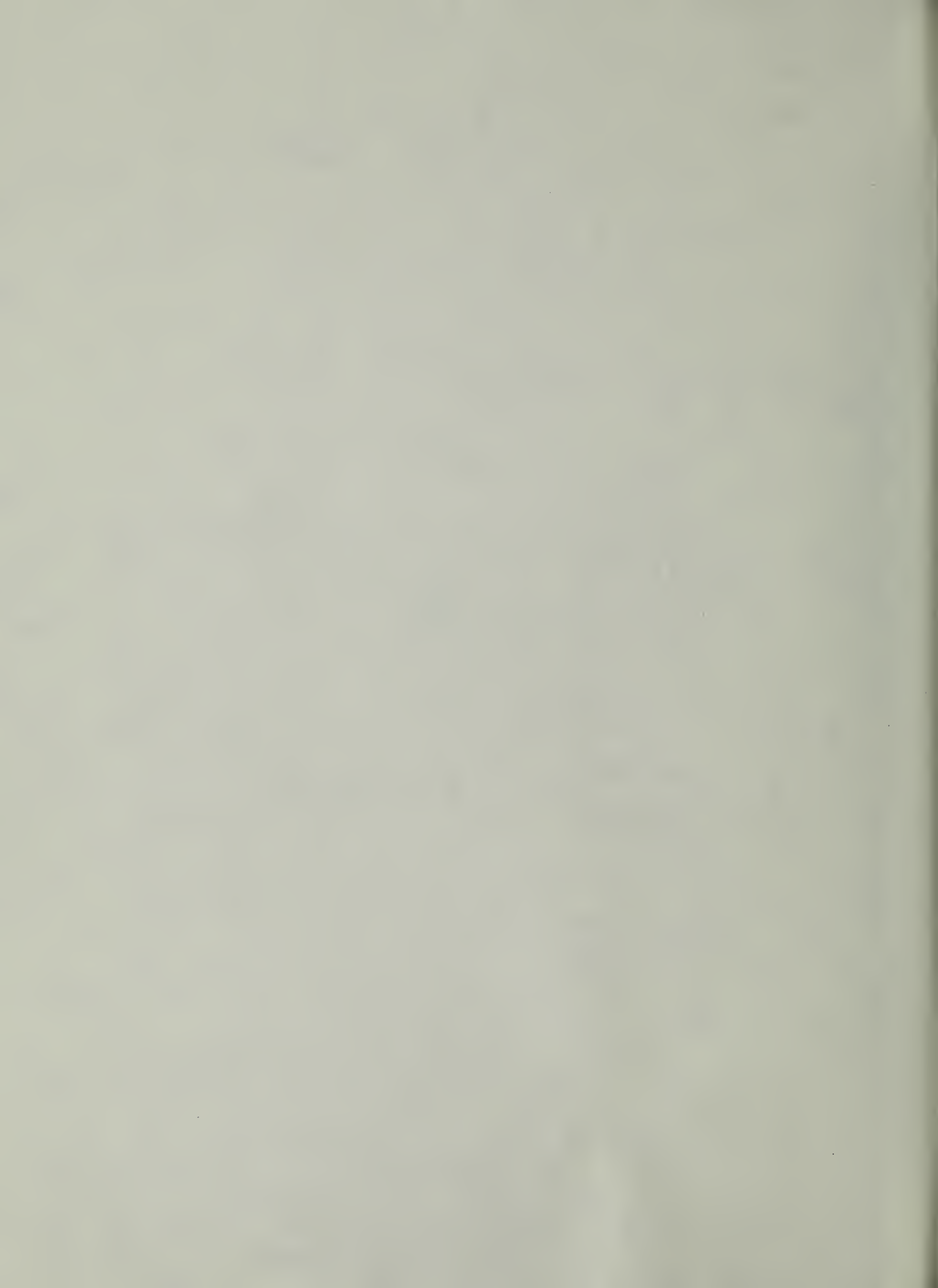
CASTRO v. BEECHER CONSENT DECREE COMMUNITIES

POLICE OFFICER

The information contained in this booklet applies specifically to municipalities in which entry level Police Officer appointments are subject to the provisions of the Castro v. Beecher Federal Consent Decree as well as to the requirements of Civil Service Law and Rule. Police Service Appointing Authorities are advised to review this information carefully prior to making any appointment or offer of appointment to the position of Police Officer.

Please remember that this certification instruction packet is intended as a general guide and cannot provide complete detail on all aspects of the selection process. Appointing Authorities and Police Chiefs are encouraged to review the provisions of MGL Chapter 31, the Personnel Administration Rules and other applicable statutes and policies to insure compliance and to prevent delays or problems in appointment approval. Appointments which do not comply with the provisions of law, rule and Consent Decree outlined cannot be approved by the Department of Personnel Administration.

Local officials are advised to retain and refer to this material until an updated version is issued.



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THE CERTIFICATION

When a requisition is filed by the Appointing Authority with the Department of Personnel Administration, a list of candidates is forwarded to the Appointing Authority. This list is called a certification.

The number of names sent out on a certification is based on the number of vacancies reported to the Department of Personnel Administration on the requisition. Personnel Administration Rule .09 requires that the certification contain enough names to reflect at least twice the number of vacancies plus 1 ($2n + 1$). The Department of Personnel Administration usually certifies names in excess of the minimum number to insure adequate response from applicants on the list.

The certification is mailed to the Appointing Authority whose name and address appear on the municipality's requisition. An original list and one copy are forwarded to the Appointing Authority. The heading of the certification summarizes primary information about the position; that is, the number and type of vacancies, the name and address of the Appointing Authority, and a statement of any required licenses which the applicant must present at the time of the interview. The Appointing Authority should take a few moments to review this information to insure its accuracy when the certification is received.

The last page of the certification contains in the lower left-hand corner the date by which the signed certification and appointments must be returned to the Department of Personnel Administration. All processing of applicants should be completed by that date; if the Appointing Authority finds that, due to unusual circumstances, the certification cannot be returned by the due date, a written request for extension must be forwarded to the Department of Personnel Administration, signed by the Appointing Authority and stating the reason for delay and the length of time which will be required for its completion. Extension requests are subject to the approval of the Personnel Administrator.

At the time that the certification is mailed to the Appointing Authority, interview notices are mailed by this Department to all those applicants whose names appear on the certification. The notice tells applicants to whom and where they must report to sign the certification if they wish to be considered for appointment; this information is drawn from the requisition submitted by the community. Applicants are given a specific date by which they must respond.

If the person identified as interviewer is different from the Appointing Authority, the Appointing Authority should provide the interviewer with the certification package immediately upon its receipt, to insure that applicants will have access to a list to sign when they report for interview.

SIGNING THE CERTIFICATION

The interviewer must insure that the original certification form is available for signature for every applicant who may come in during the interview period indicated on the interview notice.

Under no circumstances may the interviewer refuse to let a person whose name appears on the certification sign the list if the person has appeared within the required time period.

Each applicant who appears should be instructed to indicate on the original certification whether he or she **WILL ACCEPT** or **WILL NOT ACCEPT** the position. The applicant's signature should appear on the line directly beneath his or her name and address. The Notice to Appear for the interview (Form 17) is to be retained by the applicant and does not have to be signed by the interviewer or returned to the Department of Personnel Administration.

If under unusual circumstances applicants have received interview notices and appear to sign the list, and the list has not yet been received by the community, each such applicant should be asked to write a brief statement indicating his or her interest or lack of interest in the position. This statement should be signed and dated by the applicant and attached by the interviewer to the original certification form when it is received by the community. This eliminates the inconvenience to the applicant of having to return at another time to sign the certification.

CERTIFICATION ORDER

For those municipalities subject to the provisions of Castro v. Beecher, applicant names are certified in a ratio stipulated by that court order. The name of one minority applicant (identified by the letter "C" to the right of the applicant's name) is certified first, followed by the names of three non-minority applicants (identified by the letter "D".) Please note that under the terms of the Consent Decree, minority is defined as Black or Hispanic only.

Within the "C" and "D" groups, the order of certification is as follows. Candidates determined eligible for resident preference are certified first, if the community has adopted applicable statutes regarding resident preference within that community. Resident disabled veterans, veterans, and non-veterans are listed, in that order, based on the preferences provided in MGL Chapter 31. Within each such group applicants are listed in descending order by score. The names of non-residents are then certified, within the appropriate "C" and "D" groups, after all residents have been listed. Again, within the non-resident group disabled veterans are listed first, followed by veterans and non-veterans. Disabled veterans are identified by two asterisks; veterans by one asterisk. Applicants with tie

scores are listed alphabetically within their applicable preference group.

In some instances, Appointing Authorities may receive a certification showing an applicant by whose name appears the legend "402 Applicant." The provisions of Chapter 402, Acts of 1985 provide for preferred placement on the certification for initial appointment of such applicants, who are sons or daughters of deceased or disabled Fire Fighters or Police Officers, subject to those applicants having met other specific requirements of that statute.

A 534 applicant is one for whom special action has been ordered as the result of a Civil Service Commission decision. Such an applicant has been given placement on the certification by specific direction of the Commission.

If the vacancies being filled are permanent full-time, and the community in question has a reserve or intermittent force, certification is made first from the names of those appointed to the reserve or intermittent positions. In this instance, if there are Black or Hispanic reserve or intermittent officers, those officers will be listed in first, fifth, etc., position on the full-time certification regardless of the date of original appointment. If no minorities have been appointed to the reserve or intermittent force, the names of minorities from the current eligible list will be certified in accordance with Consent Decree ratio requirements.

The names of non-minority reserve or intermittent officers will be certified in order of their seniority dates and in accordance with the Consent Decree requirements. If there are insufficient names on the reserve or intermittent roster, additional names will be certified from the current eligible list.

When a certification is issued from the reserve or intermittent roster the interview notices for those listed on that roster are mailed to the Police Chief. It is the Chief's responsibility to insure that they are mailed, delivered, or handed to the candidates in adequate time to insure that they have an opportunity to sign and to be considered on the certification. The certification itself is mailed to the Appointing Authority.

Note: Police Service Appointing Authorities are reminded that MGL Ch. 147, Sec. 12, limits the number of reserves allowed in any community statutorily defined as a city. Reference information is included in Appendix E.

APPLICANT MARKS

The current provisions of the relevant consent decrees preclude printing of applicants' marks on entry-level public safety certifications. Applicants with tie scores are so identified by the printed words "Tie" and "Tie Ends" to the right of affected applicants names. Please note that the scores are limited to the ethnic group identified in the certification; that is, "C" candidates are tied only with other "C" candidates and "D" candidates with other candidates from that group. Tie score applicants are listed alphabetically within their preference groups.

INSUFFICIENT APPLICANTS RESPONDING

At the close of the interview period indicated on the Form 17, the Appointing Authority should review the response received to determine whether a sufficient number of applicants have indicated willingness to accept.

In this regard, Appointing Authorities are advised that in order to comply with the provisions of the Castro v. Beecher Consent Decree, particular attention must be paid to the number of minority applicants willing to accept on the certification. There must be enough active minority candidates to be considered for existing vacancies on the basis of one minority in the first place and thereafter a minority in every fourth place on the certification. In very rare instances the Appointing Authority may encounter insufficient non-minority candidates willing to accept. If this is the case a copy of the signed certification should be returned with a request for additional names.

The Appointing Authority must replace on the Form 16II worksheet the name of any "C" candidate who fails to respond or who declines the position with the name of the next "C" who is willing to accept, so that the 1 to 3 ratio for selection consideration is maintained. All "C" candidates who are willing to accept must be moved up into "C" slots as outlined above.

In the event that an insufficient number of "C" applicants respond for existing vacancies, Appointing Authorities subject to the provisions of the Consent Decree must make a written request to this Agency for the certification of additional minority names from this Agency and no appointments should be made or offered until the additional minority candidates have been certified and considered. Every effort will be made to expedite additional name certifications to reduce any delay in the process, but Appointing Authorities are advised that appointments made without following this procedure cannot be approved.

BACKGROUND INVESTIGATIONS, REFERENCE CHECKING AND INTERVIEWS

The results of background investigations, reference checking, and interviews may all be used as part of the selection process at the Appointing Authority's discretion and subject to policies and procedures established locally and to general provisions of state and federal law. Complete and accurate records should be maintained of all such processes.

Candidates listed on the certification have not been reviewed for ability to acquire a gun permit or for possession of a valid Massachusetts driver's license. The Department of Personnel Administration does not check court records on public safety applicants. However, an Appointing Authority may, under limited circumstances, initiate its own inquiry as to whether or not an applicant has a court record which would legitimately affect candidacy for employment as a Police Officer. Appointing Authorities are strongly encouraged to consult with their legal staff, Town Counsel, or City Solicitor before pursuing such inquiry. Appointing Authorities are reminded that under the provisions of MGL Ch. 41, sec. 101 A, no person appointed from an eligible list established as a result of an examination may smoke tobacco products after appointment. This prohibition applies to appointments made from the Police Officer eligible list established on June 7, 1988, and to all appointments made from subsequent entry-level eligible lists. (Appendix G)

Please note that the certification package contains notices for applicants regarding the no-smoking provisions. The interviewer is asked to insure that copies of these notices are provided to each candidate who appears to sign the certification. The Appointing Authority and interviewer are also asked to review carefully the information in this regard.

Medical examinations for public safety appointees are no longer administered by the Department of Personnel Administration. While communities may choose to administer such medical examinations locally, no medical reports should be forwarded to the Department of Personnel Administration. Any use of medical examination results for by-pass or removal must be based on a clear narrative statement, signed by the Appointing Authority, of the ways in which the candidate is unable to perform the essential functions of the job. That statement must include an explanation of whether reasonable accommodation has been considered and is possible for the candidate.

The use of psychological screening as a selection instrument for appointments to the position of Police Officer may be used only when a municipality has an approved psychological screening plan on file with the Department of Personnel Administration. The results of psychological screening conducted when no approved plan is on file will not be accepted in the review or approval of appointments.

Appointing Authorities whose communities utilize a medical examination or an approved psychological screening plan must insure that such screening is initiated **only after a conditional offer of employment has been made to selected appointees, as required by MGL Chapter 151 B.**

If a candidate is determined, based upon the results of an approved psychological screening plan, to be unqualified for the position of Police Officer, the Appointing Authority should return with the certification a request for removal under the provisions of PAR .09 together with a clear narrative statement signed by the Appointing Authority detailing the ways in which the candidate is unable to perform the essential functions of the job with reasonable accommodation.

If in the course of the interview or background investigation the Appointing Authority believes that there is reason to question an applicant's right to minority, resident, or veteran's preference as indicated on the certification, a letter challenging that preference and stating the basis on which the challenge is made should be forwarded **immediately** to the Bureau of Local Government Services. The Department of Personnel Administration will schedule a hearing for the candidate based on the challenge presented by the Appointing Authority, who will be notified of this Agency's findings. If questions arise regarding a candidate's eligibility for any of these preferences, Appointing Authorities should not wait until after appointments are made and the certifications forwarded to this Department to file such challenges, since the results of the hearing may not uphold the basis on which an Appointing Authority has by-passed a candidate regarding placement on the certification.

BY-PASS AND REMOVAL

Under the terms of the Consent Decree, the Personnel Administrator may not approve any appointments unless the Appointing Authority has furnished a written statement acceptable to the Administrator for rejection of any candidate whose name is higher on the list than those of candidates selected for appointment. By-pass reasons are carefully reviewed by the Personnel Administrator and are furnished as well to Plaintiff's Counsel and, upon written request, to the candidate in question. In stating reasons for by-pass, the Appointing Authority must be **specific, factual and detailed**. Appendix B contains additional information relative to documentation of by-pass, and Appointing Authorities are urged to review these requirements carefully before submitting by-pass reasons for any candidate.

In extreme instances, an Appointing Authority may conclude that the appointment of an applicant whose name appears on an eligible list would be detrimental to public safety and to the community. Request for removal under PAR .09(2) or PAR .03 must be made in writing and accompanied by substantive and specific

reasons for the removal request. Appendix A contains more specific information relative to PAR .09 and PAR .03 removals. Removal requests are subject to very stringent guidelines and Appointing Authorities are urged to review the Appendix prior to submitting documentation for removal requests.

The provisions of the Castro v. Beecher Consent Decree require the Appointing Authority to **notify any applicant who has indicated willingness to accept but was not appointed of the basis for his or her non-selection and of applicable appeal rights**. A form letter which should be prepared on municipal letterhead and sent to each such applicant is included in Appendix C. Copies of these letters **must** be returned with the report on certification.

MAKING THE SELECTIONS

Entry level public safety appointments must be made in accordance with the provisions of Personnel Administration Rule .09, a copy of which is included in the Appendix for your reference. PAR .09 requires appointments to be made within the formula of twice the number of vacancies plus one; that is, if three appointments are being made, the appointments must be made from among the first seven candidates willing to accept; if ten appointments are being made, from among the first twenty-one willing to accept, and continuing in accordance with that formula.

Applicants with tie scores are listed alphabetically within their tie groups on the certification. If one applicant within a tie group is reachable under the provisions of PAR .09, any applicant with that score and certified within that tie group may also be reached. As an example, if three vacancies are to be filled, the appointments must be made from among the top seven willing to accept. Candidate number seven on the certification is shown as having a tie score with candidates number eight and nine. In this instance, the Appointing Authority could choose to appoint the ninth candidate and still remain within the requirements of the Personnel Administration Rules. This expansion of the provisions of the Rule occurs only when the last person normally reachable under its provisions begins or continues a tie score.

The certification packet contains a PAR .09 worksheet called a Form 16II. All applicants willing to accept appointment should be listed on this worksheet in the order in which they appeared on the certification (or in accordance with the ratio provisions of the Castro v. Beecher Consent Decree if it has been necessary to move "C" candidates higher on the certification). Reference to the worksheet will then provide you with an easy visual assessment of those candidates who are reachable under the provisions of PAR .09. The completed worksheet should be signed and returned with your report on certification and appointment papers.

When you have listed on the worksheet the names of all candidates who signed the original certification indicating their willingness to accept, verify that minorities were moved up as necessary to insure compliance with the Consent Decree requirements. Identify in the right-hand column of the worksheet and on the signed certification those candidates who have been selected for appointment.

Review the form to insure that the appointments as projected fall within the requirements of PAR .09. Next, insure that for each person who is listed higher on the certification but was not selected one of the following pieces of documentation is prepared and attached: (1) a letter of declination or withdrawal from the candidate or a signed memorandum of the conversation during which declination or withdrawal was officially relayed; (2) individual narrative reasons for each candidate by-passed, signed and dated by the Appointing Authority, substantiating the specific reasons for by-pass request; (3) a narrative statement, signed and dated by the Appointing Authority, specifying the reasons for any removal request made under the provisions of PAR .03 or PAR .09.

APPOINTMENT PAPERS

When all local review has been completed and the final selection of candidates is made, and the Appointing Authority has insured that all provisions of civil service law and rule and of the Consent Decree have been met, the names, addresses, social security numbers, dates of birth, and effective dates of employment are typed on the Authorization of Employment Form 14, which is included with the certification package. Please note that the effective date of employment shown on that form may not in any case precede the date of the certification.

Personnel Administration Rule .09 requires that an appointee must actually be employed in the position within 30 days of the appointment. Because permanent full-time Police Officers must participate in Basic Police Recruit Training at the Police Academy, and because available academy openings may be limited, a separate policy has been developed to allow for police appointments which must be postponed due to academy enrollment. A detailed description of this process is contained in Appendix D.

It is strongly recommended that copies of birth certificates for those candidates selected for appointment should be attached to the Authorization of Employment Form. While the Department of Personnel Administration makes every effort to obtain these from candidates prior to the establishment of the eligible list, candidates who have not complied cannot be approved for appointment. Providing the documents with the return on certification may eliminate delays if your appointees are among those who have not previously submitted birth certificates.

RETURN OF THE CERTIFICATION

After the local appointment processing is completed, the Appointing Authority should return the following materials to the Bureau of Local Government Services:

1. The original certification list, signed by the applicants and by the Appointing Authority.
2. The completed Form 16II (Report on Certification), signed by the Appointing Authority, listing the names of all applicants willing to accept, in the order in which they appeared on the certification or in required Consent Decree format if "C" candidates have been moved up, and identifying those applicants selected for appointment.
3. A completed Form 14 (Appointment Form), signed by all appointees and by the Appointing Authority, and containing the effective dates of appointment.
4. Any letters of declination or withdrawal received from applicants.
5. Individual statements signed by the Appointing Authority for requesting the by-pass or removal of any candidates who were willing to accept and were placed higher on the list than those actually selected for appointment.
6. Birth Certificates for appointees.
7. Copies of required letters advising candidates who were by-passed or not reached of the reasons and of their appeal rights as applicable.
8. Letters of appointment for those appointees whose academy dates are more than thirty days away.
(Appendix D)

All materials should be returned in one package to the Bureau of Local Government Services, One Ashburton Place, Room 307, Boston, MA 02108.

APPENDIX A

PERSONNEL ADMINISTRATION RULES

(Effective September 28, 1987)

Prepared by the Office of Legal Counsel
of the
Department of Personnel Administration

PERSONNEL ADMINISTRATION RULES

Prepared by the Office of Legal Counsel
of the
Department of Personnel Administration

(Effective as of October 6, 1988)

PERSONNEL ADMINISTRATION RULES

(Effective as of October 6, 1988)

- PAR.01 Scope and Purpose
- PAR.02 Definitions
- PAR.03 Qualifications for Appointment
- PAR.04 Recruitment
- PAR.05 Examination Fees
- PAR.06 Examinations
- PAR.07 Civil Service Eligible Lists
- PAR.08 Civil Service Requisition and Certification
- PAR.09 Civil Service Appointments
- PAR.10 Special Certifications in the Civil Service
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- PAR.12 Probationary Period
- PAR.13 Leaves of Absence
- PAR.14 Civil Service Promotion
- PAR.15 Layoff from Civil Service Positions
- PAR.16 Performance Evaluation
- PAR.17 Development of Training Programs by State Agencies
- PAR.18 Career Management Service
- PAR.19 The Labor Service Subject to the Civil Service Law
- PAR.20 Delegation of Labor Service Functions to Cities and Towns
- PAR.21 Delegation of Labor Service Functions to State Agencies
- PAR.22 Delegation of Official Service Functions
- PAR.23 Smoking Prohibition Rule
- PAR.23 Appeals to the Civil Service Commission *
[* This rule will be renumbered after next rules hearing.]

PERSONNEL ADMINISTRATION RULES (PAR)

(Effective as of October 6, 1988)

PAR.01 Scope and Purpose

The Rules set forth by the administrator establish standards for the conduct of the civil service merit system of employment. In addition, these rules include standards governing state employment apart from civil service where rule-making is required of the administrator by statute. They are intended to provide a system of uniform standards implementing applicable law for use by appointing authorities in the employment processes of recruitment and examination of applicants for public service positions, selection among applicants for appointment and promotion, performance evaluation and layoff. These Rules will be implemented in a manner consistent with all applicable employment and anti-discrimination laws for the achievement of equal employment opportunity as set forth in the Basic Merit Principles.

PAR.02 Definitions

Within the Personnel Administration Rules, unless otherwise expressly provided or the context otherwise requires, the following words and phrases shall have the following meanings:

Administrator, the Personnel Administrator of the Department of Personnel Administration.

Appointing authority or appointing officer, any person, board or commission having the power of appointment or employment.

Appointments, in respect to the several types of civil service appointments, as follows:

(a) Emergency appointment, an appointment made for a specified time without requisition to cover unforeseeable circumstances.

(b) Intermittent appointment, an appointment from an eligible list to recurrent employment which may be regular or irregular as the needs of the service require.

(c) Permanent appointment, an appointment or promotion made to fill a permanent vacancy in a permanent position after certification for appointment by the administrator.

(d) Provisional appointment, an appointment approved by the administrator following the filing of a requisition.

tion until a suitable eligible list is established, and until an appointment can be made from a certification from such eligible list.

(e) Temporary appointment, an appointment to a temporary position or for the duration of a temporary vacancy, after certification from an eligible list.

Appointment, to positions not within civil service, is appointment to a temporary or permanent position classified pursuant to M.G.L. c. 30, s. 45, of a person who meets the qualifications for the position established by the administrator pursuant to M.G.L. c. 30, s. 45.

Basic merit principles:

- (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment;
- (b) providing of equitable and adequate compensation for all employees;
- (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees;
- (d) retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
- (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in M.G.L. c. 31 and constitutional rights as citizens, and;
- (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

Certification, the designation to an appointing authority by the administrator of sufficient names from an eligible list or register for consideration of the applicants' qualifications for appointment pursuant to the Personnel Administration Rules.

Civil service, the merit system provided by M.G.L. c. 31 and these rules for filling such positions in state and municipal government.

Civil service employee, a person appointed to a civil service position on a temporary or permanent basis after certification.

Civil service position, a position subject to all the requirements of the civil service law.

Class, a group of positions sufficiently similar in respect to the duties and responsibilities thereof that the same or similar requirements are demanded of incumbents; used interchangeably with "title," except in the labor service.

Commission, the Civil Service Commission. The Commission is an administrative appellate forum authorized to:

- (a) investigate all aspects of administration and implementation of the civil service system on its own initiative or upon request of others, as specified in M.G.L. c. 31, s. 2(a);
- (b) review all decisions, actions, or failures to act by the administrator, which cause actual harm to a person's employment status in violation of the civil service statutes, as specified by M.G.L. c. 31, s. 2(b);
- (c) approve or disapprove adoption of new or amended rules of the administrator, pursuant to M.G.L. c. 31, s. 4;
- (d) approve classification plans for cities and towns pursuant to M.G.L. c. 31, s. 5(b);
- (e) hear appeals of decisions of performance evaluation panels pursuant to M.G.L. c. 31, s. 6C(c);
- (f) review aspects of the civil service examination procedure under M.G.L. c. 31, s. 24;
- (g) hear appeals of tenured employees concerning discharge, removal, suspension, layoff, transfer, lowering in rank or compensation, or abolition of positions, all pursuant to M.G.L. c. 31, ss. 41-45, and punishment duty pursuant to M.G.L. c. 31, s. 62;
- (h) review denials of step increases to non-union employees pursuant to M.G.L. c. 30, s. 46(4);
- (i) review the decisions of the administrator concerning classifications of state managers and employees, pursuant to M.G.L. c. 30, s. 49;
- (j) review decisions of the administrator rendered under the informal grievance procedure contained in M.G.L. c. 30, s. 53;
- (k) approve or disapprove proposed actions of the administrator pursuant to Chapter 534 of the Acts of 1976.

Compensation, the rate of wages or salary paid to an employee in accordance with an authorized and established classification and pay plan.

Delegated personnel administrator, a person designated to that title by the municipal or state appointing authority for the purpose of exercising powers and performing duties in accordance with PAR.22.

Departmental unit, a board, commission, department, or any division, institutional component, or other component of a department where established by law, ordinance, or bylaw.

Discharge, the permanent involuntary separation from the service of an officer or employee.

Eligible list, a list established by the administrator in accordance with M.G.L. c. 31 from which certifications are made to appointing authorities upon requisition.

Entrance requirements, the experience and educational prerequisites which an applicant must satisfy in addition to passing a civil service examination to be qualified for appointment to a civil service position.

Entry level, a position having a title which is the lowest in a series of titles in a municipal or state classification plan, whether or not higher titles in the same job series exist in the same department.

Essay question, a question on a written examination that requires a response composed by the applicant, in the form of one or more sentences, and for which no single answer is correct and all others categorically wrong. Essay questions shall not include multiple-choice, true or false, matching or short answer completion questions for which only one answer is correct.

Examination, any instrument or process which, consistent with the civil service law and these rules, measures the fitness of applicants to perform the duties of a position. Types of examinations described in terms of eligibility include:

- (a) Competitive promotional examination, any competitive examination which is open, pursuant to M.G.L. c. 31, s. 11, to certain civil service employees of the Commonwealth, or of a city, town, or district where the promotion is to be made.
- (b) Departmental promotional examination, any competitive examination for which eligibility is limited pursuant to M.G.L. c. 31, s. 9 to civil service employees in certain lower titles in a departmental unit.
- (c) Departmental promotional qualifying examination, any examination held on a non-competitive basis, to demonstrate that the person selected for promotion, pursuant to M.G.L. c. 31, s. 8, possesses the qualifications and abilities necessary to perform the duties of the higher position.
- (d) Executive office promotional examination, any competitive examination within an executive office which is open to employees of an entire executive office who

qualify for such examination pursuant to M.G.L. c. 31, s. 10.

(e) Open competitive examination, any examination for an original appointment which is open to all members of the public who meet entrance requirements.

(f) Open continuous examination, an open competitive examination, held from time to time at the discretion of the administrator, for which application is open to the public on a continuous basis.

(g) Qualifying examination, an examination given to test the qualifications of an incumbent whose position is placed under civil service by law or rule, or an examination given to an individual to qualify for promotion, as provided in M.G.L. c. 31, s. 8.

Handicap, any condition or characteristic, physical or mental, which substantially limits one or more major life activities; a record of such impairment; a condition or characteristic which is regarded as such impairment.

Labor service, the composite of all civil service positions whose duties are such that a suitable selection for such positions may be made based upon registration pursuant to M.G.L. c. 31, s. 28, rather than by competitive examination.

Layoff, as to civil service employees, temporary discontinuance of employment due to lack of work or lack of money, or abolition of position.

Local labor service director, a person designated to that title by the municipal appointing authority for the purpose of exercising powers and performing the duties in accordance with PAR.20 of these rules.

Merit preference status, a status afforded preference in civil service appointment pursuant to M.G.L. c. 31, for example section 26:

- (a) sons or daughters of certain deceased firefighters or police officers as to public safety positions,
- (b) disabled veterans,
- (c) blind persons following disabled veterans in appointments of typists to take dictation solely from dictation machines,
- (d) veterans,
- (e) widows or widowed mothers of veterans who died from service-connected disabilities.

Performance evaluation, an evaluation of an employee's performance in accordance with the standards outlined in M.G.L. c. 31, ss. 6A-6C, inclusive. (Also see the definition for Probationary Performance Evaluation, below.)

Position, with respect to employment within the executive department of the Commonwealth, a set of duties classified with an appropriate title by the administrator pursuant to M.G.L. c. 30, s. 45 and scheduled under the .01 subsidiary of M.G.L. c. 29, s. 27 if a permanent position or scheduled under the .02 subsidiary of M.G.L. c. 29, s. 27 if a temporary position.

Probationary performance evaluation, a performance evaluation for the purpose of providing information for potential use in making decisions concerning tenured status. (Also see the definition for Performance Evaluation, above.)

Promotion, a change in employment from one title to a higher title in the same series, or to a title in a different series when the new title has substantially dissimilar requirements which prevent a transfer.

Reinstatement, the restoration to employment of an employee made in accordance with civil service law and these rules, in particular in accordance with M.G.L. c. 31, ss. 39 or 46.

Requisition, a formal notice by an appointing authority to the administrator that a vacancy exists, or will exist, and including a request that the administrator take such action as is set forth on the requisition form to fill the vacancy pursuant to civil service law and these rules.

Resignation, a permanent voluntary separation from service.

Roster, a list of permanent civil service employees in a departmental unit, arranged according to seniority, and supplemented by a list of employees appointed on a temporary or provisional basis.

Rules, the Rules promulgated by the administrator.

Seasonal position, a position requiring the services of an incumbent, on either a full-time or less than full-time basis, beginning no earlier than May first and ending no later than September thirtieth or beginning no earlier than November first and ending no later than April first in any twelve-month period; provided, however, that the following positions shall not be deemed to be seasonal:

- (a) a position in the police force or fire force of a city or town;
- (b) a position in the Capitol Police Force, or in the Police Force of the Metropolitan District Commission, and;
- (c) a permanent position for which funds have been

appropriated or are available on a permanent basis.

Notwithstanding any provision of this chapter to the contrary, a position of police officer in a police department within the counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth and Suffolk employed on either a full-time or less than full-time basis, beginning not earlier than May first and ending no later than September thirteenth shall be deemed to be a seasonal position and shall be exempt from the provisions of M.G.L. c. 31.

State labor service director, a person designated to that title by the state appointing authority for the purpose of exercising powers and performing duties in accordance with PAR.21.

Suspension, a temporary involuntary separation of a person from his civil service employment by the appointing authority.

Tenure, the status of an employee in a civil service position to which he has received a permanent appointment, after completion of the required probationary period, or in a civil service position to which he has been permanently promoted; the status of an employee appointed permanently to a non-civil service position in which he has established tenured status pursuant to M.G.L. c. 30, ss. 9A, 9B, 9D or other statutory provision.

Transfer, the change in title of an employee to a title for which specifications show essentially identical qualifications and duties; a change from a position in a title in one departmental unit to a position in the same title in a different departmental unit.

Unauthorized absence, an absence from work for a period of more than fourteen calendar days for which no notice has been given to the appointing authority by the employee or by a person authorized to do so, and which may not be charged to vacation or sick leave, or for which no leave was granted pursuant to the provisions of M.G.L. c. 31, s. 37.

PAR.03 Qualifications for Appointment

(1) As a consideration for selection, the Personnel Administrator may, consistent with applicable law, establish job-related skills and abilities, including physical and mental skills and abilities, as qualifications for positions when the need of the public service so requires.

(2) Essential qualifications for all levels of public employment are honesty, respect for law and the democratic

process, acceptance of responsibility as a matter of the public trust for performance of assigned duties, and ability to deal fairly with all persons. The burden of proof of such qualifications shall in all cases be upon the applicant, who may be required by the administrator to furnish evidence additional to the information required to be stated in his application.

(3) Failure to prove qualifications established by the administrator may be grounds for removal from an eligible list, after an investigation by the administrator which includes prior notice to the applicant and the opportunity to respond.

(4) The administrator may cancel an application, suspend the same pending investigation, exclude an applicant from examination, refuse to certify an otherwise eligible candidate, remove a candidate's name from any eligible list, or declare a candidate's appointment invalid upon proof of any of the following conditions after a hearing held by the administrator.

(a) Dismissal of the appellant or eligible from the public service, or his resignation pending charges, if such event occurred within the preceding five years and there is no convincing evidence of later rehabilitation.

(b) Evidence of conduct within five years showing lack of the essential qualifications set forth in this rule without convincing evidence of rehabilitation.

(c) The knowingly making of a material false statement by any person in his application or in his examination and any connivance by him at any material false statement made in any accompanying certificates, or the commission of or attempt to commit any fraud against civil service law or rules, or any complicity by or benefit to him in any such fraud, before, during, or after any examination.

(d) Whenever an appointing authority finds that an applicant fails to meet entrance requirements and that finding has been sustained by the administrator's review.

(e) Whenever the administrator determines that a person appointed to a non-civil service state position does not possess the qualifications for the position established by the administrator.

(f) Whenever the administrator determines, from the application or from any investigation made by the administrator, and whether before or after acceptance of the application or after appointment, that the applicant is not qualified.

(5) If the administrator declares an appointment invalid, he shall,

(a) Notify in writing the appointing authority, or

employment officer, department, board or commission of such person.

(b) Notify in writing the treasurer, auditor or other officer whose duty it is to pay the salary or other compensation of such person.

(c) Notify said officer that the payment of any salary or compensation to such person shall cease at the expiration of one week after the mailing of notice to such treasurer, auditor or other officer, and that such officer shall pay no further salary or compensation to such person until the legality of employment or appointment is duly established.

(d) Afford to each employee holding a civil service appointment an opportunity to be heard before declaring such civil service appointment invalid.

PAR.04 Recruitment

All announcements and information relating to examinations for positions in the classified service shall be disseminated in such a manner as to result in a broad and representative field of applicants consistent with the merit principles and applicable employment and anti-discrimination laws.

PAR.05 Examination Fees

(1) Time of Payment.

Applications for open competitive and open continuous examinations shall be accompanied by payment of the fee stated on the examination poster.

(2) Form of Payment.

Payment in the form of bank (cashier's) check or postal money order will be accepted.

(3) Waiver of Examination Fee.

Examination fee is waived for applicants who are receiving public assistance, either state or federal. An applicant seeking waiver of fee shall indicate in the space provided on the application form the information required to establish eligibility for waiver.

PAR.06 Examinations

(1) Procedure

(a) The administrator shall establish procedures for competitive and other examinations to test the practical fitness of applicants.

(b) The grading of the subject of training and experience as a part of an examination shall be based on a schedule approved by the administrator which shall include credits for elements of training and experience related to the position for which the

examination is held.

(c) An applicant may be allowed to take an examination subject to later review to determine if he or she meets the eligibility requirements. If it is determined that an applicant does not meet the eligibility requirements, as set forth on the poster for the office or position, he or she shall be declared ineligible by the administrator.

(d) Applications of persons for whom requisitions for employment have been made in accordance with the provisions of the fourth paragraph of section 26 of Chapter 31 of the General Laws shall be in the same form as required for all other applicants for positions for which employment is requested.

(2) Content of Examinations

(a) All selection procedures shall be practical in character and shall relate directly to those matters which fairly determine the relative ranking of the persons examined based on the knowledges, abilities and skills required to perform the primary duties (critical and frequent tasks) of the position title or occupational group as determined by reliable and representative job information available to the administrator. Examinations may be assembled or unassembled and may include written, oral, practical or performance tests, training and experience rating, assessment centers, other generally accepted selection procedures, or combinations of these which in the discretion and judgment of the administrator are appropriate for the position title or occupational group being tested.

(b) The administrator shall, on a yearly basis, notify representatives of labor whose members are in the occupational fields to be tested of a proposed examination schedule. If the representatives of labor whose members are in an occupational field to be tested request, in writing, the opportunity to consult with the administrator concerning the subject matter to be tested on a particular examination within thirty (30) days of the notification of the proposed examination schedule, the administrator shall so consult, either through meetings or written submissions, with the representatives of labor prior to making a final determination concerning the form, method and content of an examination. The administrator shall afford professionals in occupational fields to be tested an opportunity to consult on the subject matter of examinations. The final determination as to form, method and content of an examination shall be within the discretion and judgment of the administrator.

(3) Examination Results

The passing mark for each examination shall be established by the administrator in accordance with generally accepted selection procedures.

PAR.07 Civil Service Eligible Lists

(1) The examination papers of persons examined for appointment and promotion shall be marked and graded, and the results recorded. Separate eligible lists may be kept of those seeking to enter any part of the service in which special qualifications are required.

(2) Any person whose appointment has been legally made or authorized from the eligible list under these rules, and whose service has been terminated without fault or delinquency on his part during the probationary period, may, upon his request in writing made within six months from the date of termination of his service and if the eligible list from which he was appointed has not expired, have his name restored to the eligible list for the remainder of the period of validity of the list from which he was appointed.

(3) When eligible lists for the same position are established as the result of open competitive and promotional examinations, names shall be certified first from the promotional examination, second from the reemployment list if the administrator has established such a list pursuant to M.G.L. c. 31, s. 40, third from the list established from the open competitive examination.

(4) The examination marks shall be presented on eligible lists in whole numbers.

PAR.08 Civil Service Requisition and Certification

(1) Whenever any appointing authority shall make requisition to fill a position, the Personnel Administrator shall, if a suitable eligible list exists, certify the names standing highest on such list in order of their place on such list, except as otherwise provided by law or civil service rule. Insofar as possible, sufficient names shall be certified to enable such appointing authority to make appointments from among the number specified in PAR.09.

(2) Unless an appointing authority shall, within the time periods set forth in this paragraph, make and notify the administrator of an appointment from the names certified, the certification shall become void. The time periods are as follows:

(a) within three weeks of any certification of names

to the appointing authority by the administrator from any eligible list established as the result of a promotional examination;

(b) within six weeks of any certification of names to the appointing authority by the administrator from any eligible list established as the result of an open competitive non-public safety examination;

(c) within twelve weeks of any certification of names to the appointing authority by the administrator from any eligible list established as the result of an open competitive public safety examination;

provided, however, that the administrator, in his discretion, may limit or extend the term of any certification, or ratify any appointment made from such certification. Provided further, however, that any appointing authority requesting an extension must submit a written request setting forth sound and sufficient reasons as to why the appointment cannot be made within the time period set forth in this paragraph.

The administrator may, before or after an appointment has been made, cancel a certification if he finds that the certification was made in error, or that any person certified was placed on the eligible list through mistake or fraud; and, if a person has been appointed from such certification, the administrator may revoke the appointment and order the person's discharge. No person, however, shall be deemed to have been appointed or promoted to any position requiring certification by the administrator from an eligible list unless the appointing officer, prior to the date of expiration of such eligible list and without regard to the time periods for certifying set forth in this paragraph, shall have notified the administrator in writing that such person has been so appointed or promoted.

(3) If a requisition is made calling for persons having special qualifications in addition to the general qualifications tested by an examination, the administrator may issue a selective certification of the names of such persons from the appropriate eligible list.

(4) If a requisition is made to fill vacancies in a title for which no eligible list exists, the administrator may certify from a suitable list established to fill positions in a different title with similar specifications.

(5) The administrator shall place on the eligible list below the names of disabled veterans as defined in M.G.L. c. 31, s. 1, the names of blind persons for employment by any state department, board or commission in the office or offices of which dictating machines are used of typists to take dictation solely from such machines and shall certify the names of such persons upon receipt of requisition. The administrator may require appointing authorities to

identify those requisitions filed to fill positions in accordance with M.G.L. c. 31, s. 3(g).

(6) Upon receipt of a requisition for full-time service, the names of intermittent, recurrent, part-time and reserve employees appointed on a permanent basis shall be certified, in accordance with these rules regarding certification, to a position with the same title in the same department or division of a department. The basis of certification shall be the order of appointment to the permanent intermittent, permanent recurrent, permanent part-time or permanent reserve position with the same title in the department or division of a department for which requisition is made; provided, that any person so appointed shall serve a full probationary period after appointment to a full-time position.

PAR.09 Civil Service Appointments

(1) When names have been certified to an appointing authority under PAR.08 and the number of appointments or promotional appointments actually to be made is n , the appointing authority may appoint only from among the first $2n + 1$ persons named in the certification willing to accept appointment, e.g.,

when the number
of appointments
to be made is:

1
2
3
4
5

the appointing authority
may appoint only from
among the first

3
5
7
9
11

persons named in the
certification willing
to accept,

provided that when more than one promotional appointment is being made, the first such promotional appointment shall be made from among the first three persons whose names are certified and who are willing to accept, the second such promotional appointment shall be made from among the first five persons whose names are certified and who are willing to accept, the third such promotional appointment shall be made from among the first seven persons whose names are certified and who are willing to accept, and so forth.

(2) If an appointing authority concludes the appointment of a person whose name has been certified to it would be detrimental to the public interest, it may submit to the administrator a written statement giving in detail the specific reasons substantiating such a conclusion. The

administrator shall review each such statement, and if he agrees, he shall remove the name of such person from the certification and shall not again certify the name of such person to such appointing authority for appointment to such position. For the purposes of this section, "appointments" shall include promotions.

(3) The appointing authority shall require all persons appearing for interview from an eligible list established as the result of an open competitive examination to record their education and experience in a form prescribed by the Personnel Administrator. Such education and experience must be recorded as of the date of establishment of the eligible list. Appointing authorities must evaluate such education and experience against the entrance requirements for the title established by the administrator. The appointing authority must record on the certification that each person selected meets the entrance requirements and must return the original copy of each selected person's record of education and experience with the certification. If an appointing authority makes an appointment outside the $2n + 1$ certification and appointment formula set forth in paragraph (1) of this Rule because the appointing authority has made a finding that a person within the $2n + 1$ certification and appointment formula fails to meet entrance requirements, the finding must be recorded on the certification and the original copy of the individual's record of education and experience must be returned with the certification. Appointing authorities shall retain on file copies of the education and experience records of all persons selected for appointment and of all persons found not to meet entrance requirements when that finding is the basis for appointing an individual outside the $2n + 1$ certification and appointment formula.

(4) No person shall be regarded as appointed to a full-time position within the requirements of these rules unless he accepts the position and is actually employed within thirty days from the date of receipt of notice of appointment; extension will be allowed at the discretion of the administrator, for enrollment in a training program required by law.

(5) If additional names are certified to an appointing authority under the provisions of PAR.10, said appointing authority may appoint by selecting from among the number of persons specified in PAR.09(1) and from among a like number of persons whose names have been certified under the provisions of said PAR.10.

PAR.10 Special Certifications in the Civil Service

(1) Prerequisites for special certifications based on race, color, national origin or sex shall be made

whenever:

(a) an appointing authority shall make requisition to fill one or more positions included in said appointing authority's affirmative action plan on file with the administrator, and;

(b) the administrator has made a written determination substantiating that previous practices of the department and/or of said appointing authority with respect to the filling of such position or positions have discriminated against members of a group, hereinafter referred to as a protected group, on the basis of race, color, sex, or national origin in contravention of any provision of the Constitution of the United States or the Constitution of the Commonwealth, Title VII of the federal Civil Rights Act of 1964 (42 U.S.C. 2000e) or any other federal or state statute the administrator may then certify, in addition to names certified in accordance with PAR.09, the names of a like number of individuals who are members of the protected group and are on an eligible list for such position, in order of their standing.

(2) At least ten days prior to certifying names under the provisions of PAR.10(1), the administrator shall post a notice of his intention to do so in the offices of the Department of Personnel Administration and shall mail a copy of such notice to the appointing authority, with instructions to post copies of such notice at all locations where persons whose names may be certified under the provisions of section one may, if employed, be assigned.

(3) Prerequisites for special certifications of disadvantaged persons shall be made whenever:

(a) disadvantaged persons as defined by M.G.L. c. 31, s. 47A have passed an examination for the lowest title in a series as determined by the administrator, the names of such persons shall be placed upon a special eligible list ranked pursuant to M.G.L. c. 31, s. 26 as to an official service title or pursuant to M.G.L. c. 31, s. 28 as to a labor service title.

(b) in certifying names for appointment to a title for which a special eligible list is valid, the administrator shall certify names alternately from such eligible list and the regular eligible list based upon an open competitive examination for the position.

PAR.11 Temporary Appointment

(1) A person certified for temporary employment to a department in which temporary employment is regularly recurrent at stated periods, may within one year from the cessation of such employment or within the next calendar year be again employed in such position.

(2) The acceptance by an eligible of a temporary appointment shall not affect his standing on the eligible list for permanent appointment.

PAR.12 Probationary Period

(1) The probationary period after permanent original appointment to a full-time civil service position and before tenured status requires six months of scheduled performance of the actual duties of such position except as otherwise provided by law.

(2) The probationary period may be extended by the appointing authority beyond the period provided by law by the actual number of days of absence during the statutory period; written notice of such extension shall be given to the employee prior to the expiration of the statutory probationary period.

PAR.13 Leaves of Absence

(1) A civil service employee seeking a leave of absence or renewal of same for a period longer than three months shall submit a written request for the leave or renewal to the appointing authority at least twenty-one days before the leave unless submission within such time period is impracticable.

(2) When an appointing authority requests prior approval of the administrator for an employee leave of absence or renewal of a leave of absence under M.G.L. c. 31, s. 37, for a period to exceed three months, such approval shall be requested at least fourteen days before the leave or renewal of leave of the employee is to commence unless request within such time period is impracticable. Said request shall be in writing. A copy of the request shall be delivered to the affected employee. If approval is granted, the written notice of said approval by the administrator shall be delivered to the applicant.

PAR.14 Civil Service Promotion

(1) The examination process approved by the administrator for establishment of a promotional eligible list of ranked candidates may consist of a written examination, an oral examination, a practical test, a graded performance evaluation, or a graded schedule of seniority of service. A combination of the foregoing or other graded components through a ranking process to determine merit may be proposed by the appointing authority and approved by the administrator. The term seniority of service shall be interpreted to refer to service after certification in the department for which the examination is held.

(a) If training and experience is a component of the promotional ranking process, a schedule of training and experience shall include as experience all relevant work experience whether within or outside the department; such schedule shall include as training all relevant education. Nothing in this rule shall be deemed to limit the authority of the administrator to determine the weight and scope of examinations, as provided by law.

(2) In competitive examinations for promotion to any position in the classified official service, the administrator shall add two points to the general average mark obtained by any veteran, as defined in M.G.L. c. 31, s. 1, providing such veteran has first obtained a passing mark in said examination.

(3) No permanent employee shall be regarded as promoted within the requirements of these rules unless he is actually employed in the position to which he is promoted within thirty days from the date of receipt of notice of promotion. If, however, his promotion is approved by the administrator while he is serving temporarily in a position of the same or higher grade, he may continue to serve in such position as authorized by the administrator, and his permanent promotion shall not be affected by such temporary employment in a different grade notwithstanding the fact that he is not actually employed in the position to which he has been promoted during said thirty days.

PAR.15 Layoff from Civil Service Positions

(1) All civil service rights of an employee rest in the position in which he holds tenure.

(2) When one or more employees must be separated from positions in the same title and departmental unit due to lack of work, lack of money or abolition of position, all persons filling positions provisionally in the designated title must be separated first, followed by all persons filling positions in temporary status in the designated title, before any civil service employees holding the designated positions in permanent status shall be separated from such positions.

(3) When one or more civil service employees holding permanent positions in the same title and departmental unit must be separated from their positions due to lack of work, lack of money, or abolition of position, the employee with the least civil service seniority computed pursuant to M.G.L. c. 31, s. 33 shall be separated first; provided that all disabled veterans are accorded the preference provided by M.G.L. c. 31, s. 26.

(4) When one or more persons among a larger group of civil service employees holding permanent positions in the same title and departmental unit are to be separated from their positions due to lack of work, lack of money or abolition of position, and the entire group has the same civil service seniority date, the appointing authority has the discretion to select for separation among those with equal retention rights, applying basic merit principles.

PAR.16 Performance Evaluation

(1) Performance Evaluation for State Employees

(a) Purpose

There are three universal purposes for performance evaluation. These are designed to ultimately improve the efficiency and effectiveness of state services.

The three purposes are:

(i) Promote clear communication between an employee and a supervisor on: what activities and results are expected of the employee on the job, and why; how well the employee is doing; and what can be jointly done to improve specific aspects of the employee's job performance.

(ii) Serve as a guide for recognizing and rewarding good job performance, and identifying performance which needs improvement. The performance evaluation may provide information to be considered in personnel decisions (e.g., promotions, merit pay pursuant to the collective bargaining agreements, salary step decisions).

(iii) Aid the employee and supervisor in planning the employee's development of knowledge, skills, abilities and personal characteristics needed to carry out the job and to prepare for career advancement in the future.

(b) Applicability

This rule governs performance evaluation for all state non-managerial civil service employees (pursuant to s. 6A of c. 31) and all state non-managerial employees (pursuant to s. 27 of c. 767 of the Acts of 1981), except as provided for in paragraph (3) below.

(c) Approved Performance Evaluation Systems

Each employee shall be evaluated using an approved performance evaluation system. Employees may be evaluated using the Employee Performance Review System, or another system which has been certified by the Personnel Administrator as complying with the criteria listed below.

(d) Criteria

Prior to their use, all performance evaluation systems used in the Commonwealth pursuant to this rule shall be certified by the Personnel Administrator as meeting the following criteria:

(i) System Documentation: The performance evaluation system shall be described in writing. This description shall have a statement of purpose, including the universal purposes stated in (a) above, and instructions for all participants in the system.

(ii) Training: All participants in the performance evaluation system shall be trained in the use of the system, including these criteria. The agency must strive to assure that the participants in the system have the skills necessary to carry out the performance evaluations (e.g., communication skills).

(iii) Job Performance Criteria: Employees shall be evaluated on the basis of objective, observable criteria (observable results or behaviors) to the maximum extent possible. The criteria must be demonstrably job-related. Attendance must be considered. The criteria must be based on the actual duties assigned to the employee which should be consistent with the official position description and class specification.

(iv) Rating Method: The method of rating must be explicitly defined and communicated to the participants. There must be at least two rating categories which distinguish between satisfactory and unsatisfactory job performance. The method of arriving at the overall rating must be explicitly defined and communicated to the participants. An overall rating alone will not be sufficient.

(v) Rater and Ratee Designation: The rater shall be the immediate supervisor, unless otherwise designated for good reason. The employee shall be informed who will conduct the performance evaluation and make the rating. The roles of the participants shall be defined and communicated to all participants.

(vi) Rating Frequency: A standard evaluation period shall be defined and conveyed to participants. Formal evaluations will occur at least annually, but not more than twice a year. Informal or formal progress reviews may be scheduled at any time, as needed.

(vii) Performance Evaluation Conferences: There shall be at least three performance evaluation conferences. Prior to the evaluation period the employee and immediate supervisor shall meet and determine the performance criteria. The performance areas, evaluation procedures and possible uses of the evaluations in future personnel determinations will be explained at this time. At least one formal progress review conference shall take place mid-way through the evaluation period. At this conference the employee and immediate

supervisor shall discuss the employee's performance and strive to facilitate the employee's performance as may be needed. Finally, at an annual review conference the employee and immediate supervisor shall meet to discuss and evaluate job performance of the whole year. The immediate supervisor shall rate the employee's performance and convey the evaluation to the employee using a performance evaluation form. The employee shall sign the performance evaluation form indicating agreement or disagreement with the evaluation. The employee or the employee's collective bargaining agent shall receive a copy of the form upon request of the employee.

(viii) Continuity: Provision shall be made for changes in personnel and assignments (e.g., departing supervisors may rate their subordinates before they depart; employees will be evaluated when their duties change, such as upon promotion or reassignment; new employees and supervisors will be trained in the use of performance evaluation).

(ix) Confidentiality and Record Keeping: A policy on this topic shall be clearly stated and conveyed to participants. This policy shall safeguard against unauthorized access to evaluations by agency personnel. Performance evaluations shall become a permanent part of an employee's personnel file. Performance evaluations are subject to the provisions of M.G.L. c. 66A.

(x) Appeals: Appeal rights are available either through the grievance procedure contained in the employee's collective bargaining agreement, or through the procedures outlined in s. 6C of c. 31.

(xi) Quality Assurance: Provision shall be made within each agency for higher level review of performance evaluations, including an administrative review for fairness of the overall application of the performance review system (e.g., by a quality control committee).

(e) Performance Evaluation for Probationary Employees Probationary employees may be evaluated twice during the probationary period (pursuant to s. 34 of c. 31). For employees with a six month probationary period, evaluations may take place in the first two months and before the sixth month of the probationary period. For employees with a longer probationary period, the second evaluation may take place before the last month of the probationary period. If the second performance evaluation is unsatisfactory, the probationary period may be extended for two months. Any number of formal or informal progress reviews may be scheduled by an appointing authority for an employee during the probationary period. The appointing authority may, but

is not required to, evaluate a probationary employee. The appointing authority may, but is not required to, consider the results of any probationary performance evaluations in making decisions concerning granting an employee tenured status. The rights of probationary employees do not include the appeal rights described in s. 6C of c. 31, but do include the grievance procedure contained in the employees' collective bargaining agreement.

(f) Use of Performance Evaluation in Civil Service Examinations

(reserved)

(g) Implementation Date

After July 1, 1987 only approved performance evaluation systems may be used.

(h) Participation of Representatives of Collective Bargaining Units

Representatives of collective bargaining units to be evaluated pursuant to s. 6A of c. 31 shall participate in the process as provided in that section in conjunction with the Personnel Administrator and with the Director of the Office of Employee Relations through the collective bargaining process as set forth in c. 150E. Representatives of collective bargaining units to be tested pursuant to s. 6B of c. 31 shall have the option of participating in the process as provided in that section either directly with the Personnel Administrator or in conjunction with the Personnel Administrator and the Director of the Office of Employee Relations through the collective bargaining process as set forth in c. 150E.

(2) Performance Evaluation of State Managers
(reserved)

(3) Performance Evaluation for Municipal Employees
(reserved)

PAR.17 Development of Training Programs by State Agencies
(reserved)

PAR.18 Career Management Service
(reserved)

PAR.19 The Labor Service Subject to the Civil Service Law

(1) Designation of Labor Service Positions

(a) The provisions of these rules shall apply to all labor service employees in the service of the Commonwealth unless specifically exempted by law, and, subject to law, to labor service employees of the cities and towns.

(b) The administrator shall designate positions subject to the civil service law and these rules whose duties

are such that suitable selection therefor may be made based upon registration in the manner provided by M.G.L. c. 31, s. 28. The composite of such positions shall constitute the labor service, which shall be subject to basic merit principles and the provisions of the foregoing Rules insofar as such Rules are not inconsistent with the following rules especially applicable to such service. When titles are redesignated between the official service and the labor service, persons holding a permanent appointment to a civil service position, shall, notwithstanding such redesignation, retain their civil service rights without impairment.

(c) The labor service shall be divided into three classes: (I) Laborers; (II) Skilled Laborers; (III) Mechanics and Craftsmen. The administrator shall establish suitable titles within each of these classes and shall provide for the registration of applicants and the establishment of registers according to such titles. An appointing authority may, subject to law, fill positions in any class by original or promotional appointment.

(2) Original Appointment

(a) When positions are to be filled on a permanent or temporary basis in the labor service, the appointing authority shall make requisition to the administrator or to the local labor service director stating the title of the position to be filled on a full-time, intermittent or part-time basis, the number of vacancies, a description of the duties to be performed, the location, starting date and probable duration of employment, and the salary to be paid.

(b) When a requisition is received for temporary service, the employment of persons appointed shall continue only for the time stated in the requisition, unless the administrator or local labor service director shall otherwise direct. The requisition shall state the reason the vacancy is temporary.

(c) The administrator or local labor service director shall establish and maintain rosters for each departmental unit and by appropriate class containing the names, position titles and effective dates of employment of persons appointed to permanent or temporary labor service positions in the service of the commonwealth or of a municipality after certification from labor service registers. Separate rosters shall be maintained for full-time permanent, less than full-time permanent, full-time temporary, and less than full-time temporary positions.

(d) If the appointing authority requests in its requisition the certification of persons with experience in the department, preference shall be given in certification to all persons who have served

at least one year after certification in such department in the same title for which requisition is made, provided such persons have not been discharged for cause or have not resigned with charges pending. If such service was performed on an intermittent or part-time basis, the appointing authority shall submit proof that such persons have accrued employment equivalent to one year of full-time employment.

(e) Selection and original appointment shall be made as provided in PAR.09.

(f) The administrator may establish minimum requirements, including experience requirements, in addition to those imposed by statute for Class II and Class III positions; the administrator or local labor service director may also require a practical test to determine the qualifications of applicants for such positions.

(g) The administrator or local labor service director may require applicants to undergo physical examination to determine their fitness to perform the duties of positions for which they apply.

(h) The appointing authority shall, within the time indicated on the certification, report to the administrator or the local labor service director, in a form prescribed by the administrator, which of the persons certified have been selected for original appointment. The appointing authority shall, at the same time, submit appointment forms supplying such information as the administrator may require.

(3) Removal From and Restoration to the Register

(a) If any person certified fails to respond, declines the employment offered, or fails to report for work after signifying his willingness to accept the position, the appointing authority shall so inform the administrator or local labor service director, and the name of such person shall be removed from the register. If an applicant whose name is registered for more than one title accepts a permanent appointment to any position in the labor service, the administrator or the local labor service director shall remove his name from the register for all other titles.

(b) In case any applicant is found by the administrator or the local labor service director to be unfit or unqualified pursuant to the standards of PAR.03 to perform the duties of the position which he seeks, his name shall not be entered on the register and the register for the position may be established notwithstanding; and, if on the register, it shall be removed therefrom after written notification and the opportunity for hearing, and the reason shall be entered on the records of the administrator or the local labor service director.

(c) No person whose name is removed from a register for any other reason set forth in these rules shall have his name restored to the register unless he makes request in writing and provides a satisfactory written explanation to the administrator or local labor service director; such request must be made within six months of the removal date.

(4) Provisional Appointments

(a) Whenever the administrator or local labor service director is unable to provide an appointing authority with a certification of names from which to fill a requisition, he may authorize the appointing authority to make a provisional appointment pending the issuance of a certification for the position. The appointing authority shall forthwith notify the administrator or local labor service director in writing of his selection for such provisional appointment in a form prescribed by the administrator.

(b) A provisional appointment may be terminated by the administrator or local labor service director at any time; provided that no provisional employment in a position shall be authorized or continued for more than thirty days following a certification from the register established for the position if such certification contains the names of three persons willing to accept appointment to the position.

(5) Promotional Appointments

(a) Promotional appointments and changes of position under the provisions of M.G.L. c. 31, s. 29 shall be made from among the same number of persons with the greatest length of service as the number specified in making appointments under PAR.09, provided that such persons possess the required qualifications and serve in eligible titles, as determined by the administrator. If there are less than the requisite number of persons, selection may be made from the lesser number.

(b) The appointing authority shall report each promotional appointment to the administrator or the local labor service director in a form prescribed by the administrator and shall certify that such promotion is in accordance with the civil service law and these rules.

PAR.20 Delegation of Labor Service Functions to Cities and Towns

(1) Local Labor Service Director.

The mayor, city or town manager, or board of selectmen in each city or town in which labor service positions are subject to the provisions of the civil service law and these rules shall designate in writing to the administrator a local labor service director who shall

continue in such capacity until such time as another person is so designated.

(2) Publication of Vacancies.

If a vacancy occurs in a position in such service for which there are no available applicants registered, such local director shall advertise and post a notice or notices of such vacancy, as prescribed by the administrator, and shall establish a register for the position. The appointment shall be made in accordance with paragraph 2 of this Rule.

(3) Application.

Said local director shall receive applications from, and make provision for the registration of, applicants for positions in the labor service in his city or town in the manner provided by the civil service law and these rules and as may be further required by the administrator.

(4) Requisition.

Appointing authorities in each such city or town shall make requisition to fill positions in the municipal labor service to the local labor service director, according to the civil service law and these rules and in such manner as may be prescribed by the administrator.

(5) Certification.

Each such local director shall, upon receipt of a requisition, certify to the appointing authority the names of persons eligible for original appointment as provided by the civil service law and these rules. Each appointing authority shall select persons for original appointment from among such names in the manner provided by such law and rules.

(6) Record-Keeping.

Each such local director shall maintain rosters of labor service employees, by class, for each departmental unit in his city or town in the manner specified by M.G.L. c. 31, s. 71 and PAR.19(2)(c).

All registers, requisitions, certifications and reports thereon, records of appointment, or copies thereof, and rosters shall be readily available for public inspection at the city or town hall or offices during regular business hours. Notice shall be posted at the location where such documents are made available advising applicants of their right to appeal to the administrator and, if they continue to be aggrieved, to the civil service commission with respect to any alleged irregularities.

(7) Audit.

The administrator shall perform a random audit of

applications, registers, requisitions, promotional bulletins, certifications and reports thereon, original and promotional appointments and rosters which are under the direction of the local labor service director.

PAR.21 Delegation of Labor Service Functions to State Agencies

The administrator may, to the extent he deems practicable, delegate labor service functions to those state agencies in which labor service positions are subject to the provisions of the civil service law. Such delegation will be made in accordance with a written delegation agreement between the administrator and the state agency.

PAR.22 Delegation of Official Service Functions

The administrator may, to the extent he deems practicable, delegate official service functions to municipalities and state agencies in which official service positions are subject to the civil service law. Such delegation will be made in accordance with a written delegation agreement between the administrator and the municipality or state agency.

PAR.23 Smoking Prohibition Rule (Effective October 6, 1988)

This Rule is promulgated pursuant to sections 5, 6, 11, 117, 120 and 123 of chapter 697 of the Acts of 1987 which amend section 9A of chapter 22 of the General Laws, section 2 of chapter 27 of the General Laws, section 64 of chapter 31 of the General Laws, section 101A of chapter 41 of the General Laws, section 29 of chapter 90 of the General Laws and section 3A of chapter 465 of the acts of 1956.

23.1 Definitions as used in this Rule:

"appointment"

a. for positions subject to chapter 31 of the General Laws, means any appointment whether provisional, temporary or permanent, full-time, part-time, intermittent or reserve, to a covered position from an eligible list established as the result of a civil service examination administered after January 1, 1988.

b. for positions not subject to chapter 31 of the General Laws, means any appointment whether provisional, temporary or permanent, full-time, part-time, intermittent or reserve, to a covered position after January 1, 1988.

"covered position" means the following appointive titles:

police officer -- Division of State Police
police officer -- Metropolitan District Commission

23.5 Appointing authorities have the responsibility to enforce the prohibition against smoking tobacco products. Any employee subject to the prohibition who is found, after a hearing pursuant to PAR 23.6 below, to have smoked any tobacco product subsequent to appointment shall be terminated.

23.6 Before an employee is terminated pursuant to this Rule, such employee shall be given a written notice by the appointing authority which shall include the contemplated termination and the specific reason or reasons for the termination, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the hearing date. If such hearing is conducted by a hearing officer, his or her findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after completion of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his or her decision which shall state fully and specifically the reasons therefore. Notwithstanding the foregoing an employee also has any rights to hearing or appeals procedures to which he or she may be entitled under chapter 31 or a collective bargaining agreement. If, after a hearing under this rule, or pursuant to chapter 31, or a collective bargaining agreement, a finding is made that an employee did smoke a tobacco product subsequent to appointment to a covered position, termination from that position or any subsequent promotional position is mandatory.

PAR.23 Appeals to the Civil Service Commission*

[* This rule will be renumbered after the next rules hearing.]

(1) Appeals may be filed with the commission in accordance with any grant of jurisdiction under the General Laws or special act, as outlined in PAR.02(11).

(a) Appeals under M.G.L. c. 31, s.2(b) must meet the following criteria:

(i) the appellant must make specific allegations in writing that the administrator acted, failed to act, or rendered a decision which was in violation of M.G.L. c. 31, these rules, or basic merit principles as defined in M.G.L. c. 31, s. 1;

(ii) the appellant must, by said allegations, clearly show that a right or rights under M.G.L. c.31 was or were clearly abridged, denied, or prejudiced due to the aforesaid action, failure to act, or decision in such a manner as to cause actual harm to the appellant's employment status; said allegations must make specific reference to the provision of law, rule, or basic merit principle which was violated;

- (iii) a copy of the appeal notice must be filed with the administrator within three days of the filing of the appeal notice with the commission.
- (b) Appeals under M.G.L. c. 31, s. 24 must meet the following criteria:
 - (i) the appeal must relate to the marking of the appellant's answers to essay questions, a finding that the appellant did not meet entrance requirements for the examination, or that the examination was not a fair test of the applicant's fitness to actually perform the primary or dominant duties of the position tested for;
 - (ii) the appeal must be filed within seventeen days of the mailing of the administrator's decision to the applicant.
- (c) Appeals under M.G.L. c. 30, s. 49, relating to classification, shall be heard on a de novo basis.

(2) These rules are not intended to limit the authority of the commission to promulgate rules governing practice and procedure before it.

APPENDIX B

BY-PASS AND REMOVAL GUIDELINES (IS 012)



commonwealth of massachusetts
PERSONNEL INSTRUCTION
department of personnel administration

August 7, 1986

TO: State Appointing Authorities
Municipal Appointing Authorities

FROM: David A. Haley, Personnel Administrator

RE: Guidelines for Providing Valid Selection
and By-Pass Reasons

IS 012

The Department of Personnel Administration has received a number of inquiries regarding the appointment standards to be used in selecting applicants for appointment to Civil Service positions. Additionally, there appears to be some confusion regarding by-pass reasons for police and fire forces covered by the federal court consent decrees and, in particular, the use of criminal records. Finally, legislation was passed this past year concerning the use of lie detector examinations in the employment context which affects all appointing authorities. This memorandum will address each of these areas.

Reasons for Selection

M.G.L. c.31, section 27, requires appointing authorities to provide written reasons for the selection of any individual(s) other than those highest on the list. Such reasons must be provided with the returned certification and will be reviewed by the Department of Personnel Administration.

A careful reading of Personnel Instruction IS-007 will be helpful in insuring that appointments made of applicants not highest on the list meet established criteria. As a further guideline, however, you may wish to consider the following categories of information in the evaluation and preparation of your written documentation.

1. Good prior work performance as indicated by references and statements from previous employers, including, when available, awards and certificates of recognition demonstrating such positive attributes as reliability and outstanding performance.

2. Specific examples of accomplishments or skills in past job performance which appear to be predictive factors of ability to perform in the job for which the applicant is being considered.

3. Results of the interview process, specifically indicating ways in which an applicant displayed skills, communicative or otherwise, which are required on the job.

4. Personal characteristics evaluated during the course of the interview background investigation, and reference checking, such as self-control, community relations and ability to get along with others.

5. Exhibition of commitment to the type of work involved shown through the applicant's choice of paid or volunteer activity over a significant time period. In the case of public safety positions, assistance with community social services, public protective agencies or rescue operations may also be used if detailed and related by the appointing authority to the requirements of the position.

6. Directly related experience in the community in the relevant position is acceptable if that experience has been after certification rather than on a provisional basis.

The above list is not intended to be exclusive. The duties of the position sought should indicate to the appointing authority those qualities which are job-related and thus may be considered. Such attributes may be the basis for valid selection by the appointing authority as long as they are applied equally and consistently to all applicants involved in the selection process.

Finally, negative comments concerning the individuals higher on the list than the person selected will not be accepted as selection reasons. Selection reasons must address positive job-related reasons for selecting the individual who is being appointed.

Reasons for By-pass

Appointing authorities which are subject to the provisions of the federal consent decrees (NAACP v. Beecher; Castro v. Beecher) in the appointment of entry-level Police Officers or Fire Fighters are required by the provisions of those decrees to provide written reasons for the by-pass of any applicant higher on the list than other applicants selected for appointment.

As you can understand, it would be highly inappropriate for this agency to provide appointing authorities with a list from which they may pick, choose, and quote reasons for by-passing applicants.

For guidance in insuring the compliance and understanding of appointing authorities with the provisions of the decrees, however, it should be noted that reasons for by-pass which are not specific and documentable as falling into one of the following categories may be determined unacceptable by the Department of Personnel Administration. It is essential that any reason submitted for by-pass must be specifically related by the appointing authority to the knowledges, skills, abilities and requirements of the specific public safety position in question.

1. The results of any interview process may be sufficient reasons for by-pass if the appointing authority is specific as to the nature of the problem which occurred during the course of the interview. Simply saying that someone did not perform well, or as well as another applicant during the course of the interview is not sufficient. General comments explaining the ways in which specific applicants did not perform well during the course of the interview may provide sufficient reasons for by-pass.

2. Information obtained from the background investigation indicating the references from previous employers were poor, i.e., frequent absenteeism, poor performance, termination for cause, abandonment of job, poor military record, or other such reasons may be sufficient for by-pass.

3. A statement from the appointing authority documenting that the background check has shown a pattern of conduct in community life which indicates an unsuitability for public safety work. For example, documented instability, occasions of violent, uncontrolled behavior or unreliability may be the basis for by-pass, as may documentation of a poor military record or substantive verification that an applicant has exhibited a disregard for the law, immaturity, irresponsibility, or poor judgment in ways which would relate to the candidates' suitability for the position of Police Officer or Fire Fighter.

4. Applicants may be by-passed on a certification if they:

a. Refuse to complete a uniformly administered request for information such as a local application form;

b. Indicate during the interview, and there is a record to substantiate, that he or she is not available to work the shifts required or that he or she will not follow through with taking courses required after employment as a condition of employment established by the appointing authority.

Applicants who are by-passed on a certification for any of the above or other reasons must be included by the appointing authority in the completion of the Report on Certification (Form 16 II) listing those willing to accept, and must be counted in the selection formula established by PAR.09.

In any instance where an applicant is by-passed on a certification, appointing authorities should carefully review the reasons provided to insure their compliance with the requirements of the law and of the decrees. It is essential that all practices, standards, and procedures be administered equally to all applicants. Appointing authorities must also remember that reasons submitted for by-pass are available to applicants upon written request to the Department of Personnel Administration and such applicants may appeal to the Civil Service Commission if they believe the reasons provided are untrue, invalid, or pretextual. Documentation supportive of such reasons in the course of an appeal is the responsibility of the appointing authority.

Appointing authorities at times request removal of applicants from a certification under the provisions of PAR.09(2) (formerly Civil Service Rule 15.2). As with reasons for by-pass, requests for such removal are carefully reviewed by the Personnel Administrator and are subject to even more stringent guidelines and constraints. Appointing authorities are advised that such removal should be requested only when substantive documentation exists that such an appointment would be detrimental to the public safety force.

Criminal Records

Information on an applicant's criminal record is often submitted to support a by-pass or removal request for Police Officer and Fire Fighter positions. The Department of Personnel Administration reviews such requests carefully and conducts an independent criminal records review. While there are no hard and fast rules about criminal records, the following should provide some guidance in this area.

1. Because persons convicted of felonies cannot obtain gun permits in Massachusetts, conviction of a felony is always grounds for removal for the position of Police Officer. Conviction of a felony will in most cases be grounds for removal for the position of Fire Fighter, as well as a reason for by-pass.

2. Conviction of a misdemeanor is often, but not always, grounds for by-pass and would not be grounds for removal. The nature and gravity of the misdemeanor, the length of time since conviction and the number of convictions are all factors in a by-pass decision.

3. If an applicant has been charged with a felony and the case has been continued without a finding, there may be grounds for removal in the situation where the charges are still pending. The nature of the charge, the time involved, and the extent of other convictions or pending charges would all be factors.

4. A charge of a misdemeanor which has been continued without a finding would not be grounds for removal but might be grounds for bypass. Again, the factors discussed above must be considered.

5. An outstanding warrant for the applicant's arrest will be grounds for bypass where the warrant is brought to the applicant's attention and he or she refuses to deal with it. Removal may be appropriate depending on the factors discussed above and therefore where the warrant is for a felony or a misdemeanor is a factor. The state issuing the warrant and the age of the warrant would not be significant factors if the warrant remains outstanding.

6. "Incidents" which are found in the department's internal records can be grounds for bypass but are not considered to be based on criminal records. Instead they are more analogous to decisions based on a poor employment record. The date of the incident is relevant in this regard. Incidents involving domestic disputes are given less weight than other offenses.

As with selection and by-pass reasons in general, the use of criminal record information as the basis for by-pass or removal must be applied in a consistent manner to all applicants.

Lie Detector Test - Employment Applications

Pursuant to a recent amendment to M.G.L. c.149, section 19B, all applications for employment in Massachusetts as of September 30, 1986 are required to state the following:

It is unlawful in Massachusetts to require or administer a lie detector test as a condition of employment or continued employment. An employer who violates this law shall be subject to criminal penalties and civil liabilities. .

The Department of Personnel Administration will include this language on all of our applications for Civil Service employment. Many appointing authorities, however, also use their own application forms as part of the appointment process. The law requires that the language also be included on those forms as of September 30, 1986.

APPENDIX C

NOTIFICATION LETTER TO BY-PASSED APPLICANTS

CONSENT DECREE COMMUNITIES

This should be prepared on official letterhead and must be sent to each candidate on the certification who indicated willingness to accept but who was not appointed. Copies of these letters are to be included with the certification when it is returned to DPA.

Dear (Candidate):

You have reported to this Community that you are willing to accept employment as a FIRE FIGHTER and/or POLICE OFFICER on certification number _____. You have not been appointed for the following reason:

- ☐ 1. We have requested the by-pass of your name for appointment at this time.
- ☐ 2. We have requested that your name be removed from this Community's current eligible list, under the provisions of Personnel Administration Rule .09.
- ☐ 3. We have requested that your name be removed from the current eligible list for this title for all communities under the provisions of Personnel Administration Rule .03.
- ☐ 4. Your name was not reached for appointment on this certification.

1. If a request has been made for by-pass of your name for appointment, you may obtain a copy of the reasons for this action from the Department of Personnel Administration by sending a written request to the Bureau of Local Government Services, Room 307, Department of Personnel Administration, One Ashburton Place, Boston, MA 02108. Your name remains on the eligible list for this title and you may be considered for appointment from future certifications until the eligible list expires.

2. If a request has been made for the removal of your name from the eligible list for this title in this Community, the reasons stated by the appointing authority for such action under PAR .09(2) may be obtained by sending a written request to the Bureau of Local Government Services, Department of Personnel Administration, Room 307, One Ashburton Place, Boston, MA 02108.

3. If a request has been made for the removal of your name from the eligible list for this title under PAR .03, it may be removed for all communities. Copies of the reasons provided by this Community for such request may be obtained by writing to the Bureau of Local Government Services, Department of Personnel Administration, Room 307, One Ashburton Place, Boston, MA 02108.

4. If your name was not reached for appointment, it means that all candidates appointed were ahead of or tied with you on the eligibility list. Your name remains on the eligible list for this title and you may be considered for appointment from other certifications until the eligible list expires.

Any request for removal or by-pass of your name on the certification will be reviewed by the Department of Personnel Administration prior to acceptance. If the request is approved, you have the right to appeal the action directly to the Civil Service Commission after requesting and receiving from the Department of Personnel Administration copies of the reasons which are provided by this Community. An appeal can be filed by writing to: Civil Service Commission, One Ashburton Place, Room 413, Boston, MA 02108.

Thank you for your interest in appointment to this Department.

Very truly yours,

APPENDIX D

POLICE ACADEMY DATES MEMORANDUM



commonwealth of massachusetts

PERSONNEL INFORMATION

department of personnel administration

August 14, 1987

TO: Municipal Police Appointing Authorities
FROM: David A. Haley, Personnel Administrator
SUBJECT: Civil Service Appointment Procedures
and Police Academy Dates

The procedures outlined below have been developed by the Department of Personnel Administration to satisfy the requirements of MGL Chapter 31, Chapter 932 of the Acts of 1977, and of the Personnel Administration Rules relative to the appointment of Police Officer candidates and the mandatory participation of those appointees in Basic Police Recruit Training at the Police Academies.

Appointing authorities may utilize the following procedure when the effective date of employment must be delayed pending an academy vacancy:

Step 1 - After a requisition is received in this Department, a certified list of candidates who have passed the written examination is forwarded to the appointing authority.

Step 2 - The appointing authority conducts the interview and screening of candidates and makes selections in accordance with law, rule, and applicable consent decrees.

Step 3 - The appointing authority prepares a letter identifying those whose appointment form must be held pending an academy date.

Step 4 - The certification and report forms are returned to the Public Safety Team, Department of Personnel Administration, identifying those candidates who have been selected. The packet should contain completed appointment forms for those who begin actual employment or the academy within thirty days, together with the letter referenced in Step 3 for all other appointees.

Step 5 - The Public Safety Team audits the certification to insure that the selections are in order and approves appointments not subject to Step 3.

Step 6 - Thirty days prior to the academy date, the appointing authority forwards to the Public Safety Team the completed and signed Authorization of Employment Form for those identified in Step 3, indicating the date employment begins, which will be the first day of the training program.

Step 7 - The new appointment form is reviewed by the Public Safety Team for approval and approved copies are forwarded to the Auditor or Accountant for that municipality for payroll purposes.

Questions relative to this procedure may be addressed to the Public Safety Team, Bureau of Local Government Services at (617) 727-4917.

APPENDIX E

POLICE RESERVE FORCE LIMITATION

REGULAR AND RESERVE TABLE - CITIES

(Fire - G.L. Ch. 48, Sec. 59C -

Police - G.L. Ch. 147, Sec. 12)

<u>NUMBER OF REGULARS</u>	<u>NUMBER OF RESERVES ALLOWED</u>	<u>NUMBER OF REGULARS</u>	<u>NUMBER OF RESERVES ALLOWED</u>	<u>NUMBER OF REGULARS</u>	<u>NUMBER OF RESERVES ALLOWED</u>
1-17	5	80- 89	20	240-249	36
18-20	6	90- 99	21	150-259	37
21-23	7	100-109	22	260-269	38
24-26	8	110-119	23	270-279	39
27-29	9	120-129	24	280-289	40
30-34	10	130-139	25	290-299	41
35-39	11	140-149	26	300-309	42
40-44	12	150-159	27	310-319	43
45-49	13	160-169	28	320-329	44
50-54	14	170-179	29	330-339	45
55-59	15	180-189	30	340-349	46
60-64	16	190-199	31	350-359	47
65-69	17	200-209	32	360-369	48
70-74	18	210-219	33	370-379	49
75-79	19	220-229	34	380-389	50
		230-239	35		

Section 12. Reserve Police Force. in Certain Cities;
Number of Members.

The number of members of such reserve force shall not exceed five in cities in which the number of members of the regular force does not exceed fifteen. If the number of members of the regular force exceeds fifteen, one member may be added to the reserve force for every three of the regular force above fifteen and not above thirty; one for every five of of the regular force above thirty and not above eighty; and one for every ten of the regular force above eighty.
(1986, 314, s.2; RL 108, S.27.)

APPENDIX F

PROCESS FOR REQUESTING EXEMPTION FROM CONSENT DECREE



commonwealth of massachusetts
PERSONNEL INFORMATION
department of personnel administration

September 1, 1987

TO: Consent Decree Public Safety Appointing Authorities
FROM: David A. Haley, Personnel Administrator
SUBJECT: Process For Requesting Exemption From Consent Decree

Public Safety Appointing Authorities subject to the provisions of the Castro v. Beecher (Police) and NAACP v. Beecher (Fire) federal consent decrees have requested information regarding the process and the criteria for seeking approval for exemption from these decrees.

An Appointing Authority who believes that the Police or Fire Department has met the requirements of the applicable decree should take the following steps:

1. Check the most recent federal census to determine:
 - a. Total population of the municipality
 - b. Total Black and Hispanic population of the municipality
 - c. The actual percentage of the total population which is Black or Hispanic as determined by that census
2. Compare the statistics gained from the census with information specific to the Fire or Police Department under consideration:
 - a. Determine the total number of authorized positions in the permanent full-time uniformed force in the Department
 - b. Verify the total number of post-probationary (tenured) full-time permanent Black or Hispanic members of the uniformed force
 - c. Determine the actual percentage of the authorized uniformed permanent full-time force which is made up of tenured Black or Hispanic officers of any rank

3. If the percentage of tenured Black and Hispanic officers in the municipal force equals or exceeds the percentage of Black and Hispanic members of the municipal population, a request for review of exemption may be filed with the Department of Personnel Administration:
 - a. A letter requesting such exemption should be forwarded over the signature of the Appointing Authority to the Director, Bureau of Local Government Services, Room 307, One Ashburton Place, Boston, MA 02108.
 - b. The letter should detail all facts and statistics determined in steps 1 - 3 above.
 - c. The Appointing Authority should include with the request a listing (by name, ethnic identity, and permanent appointment date) of all tenured Black and Hispanic officers employed in the municipal Police or Fire Force.

The information will be reviewed by the Department of Personnel Administration and by the Counsel for the Plaintiffs under the NAACP and Castro consent decrees.

Written notice of the decision regarding the exemption request will, in most cases, be forwarded to the community within thirty days of the completed request.

It should be noted that no request for exemption should be filed if the minority members of the police or fire force have not yet completed their probationary periods or if a certification issued in consent decree format is outstanding. Requests for exemption based solely on a change in population figures will not be approved by Counsel for the Plaintiffs and should not be submitted.

Should you have questions regarding the information contained in this memorandum, please contact Christine Kent, Director, Local Government Services, at (617) 727-4917.

APPENDIX G

POST-APPOINTMENT SMOKING PROHIBITION

**QUESTIONS AND ANSWERS ON THE SMOKING PROHIBITION FOR MUNICIPAL
POLICE AND FIRE DEPARTMENTS UNDER CIVIL SERVICE:**

1. What is the authority for the smoking prohibition?

The rule has been adopted under the authority of the Pension Reform Act, Ch. 697 of the Acts of 1987. Section 117 of the Act adds the following to Chapter 41 of the General Laws:

"Section 101A. Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator shall promulgate regulations for the implementation of this section."

2. Who is covered by the smoking prohibition?

The prohibition applies to appointments from an eligible list established from examinations given after January 1, 1988. This means police officers appointed from certifications being issued from the March 1988 exam are COVERED; fire fighters appointed from certifications being issued from the December 1987, exam are NOT COVERED. Fire fighters appointed from lists developed from the next fire fighter exam will be covered.

Employees appointed prior to the coverage date are "grandfathered" with respect to the prohibition.

Note that this includes ALL personnel REGARDLESS of status: provisional, temporary or permanent; full-time, part-time, intermittent or reserve.

3. What happens when a police officer or fire fighter is promoted?

If an employee covered by the prohibition is promoted to a higher rank, he or she continues to be covered by the rule. If the employee has been "grandfathered," promotion does not bring him or her under the prohibition, even if the promotion occurs after January 1, 1988. The narrow exception is that a "grandfathered" employee promoted to the position of "chief" through an open competitive exam WILL BE COVERED, since the promotion is treated as an original appointment.

4. What conduct is prohibited?

Employees to whom the prohibition applies may not, subsequent to appointment, smoke any tobacco product at any time whatsoever. This includes cigars, cigarettes, pipes or any other tobacco product; and includes time when the employee is on duty, off duty, on sick leave, vacation, leave of absence, and any and all other status.

5. Who enforces the rule?

The appointing authority is responsible for enforcement of the smoking prohibition.

6. What happens if a covered employee violates the rule?

He or she is entitled to a hearing, procedures for which are outlined in the rule. If it is established that the rule was violated, the employee must be terminated from his or her position. The employee could, however, be retained in another capacity not covered by the smoking prohibition.

7. How are prospective employees notified of the smoking prohibition?

Applicants for civil service examinations for covered positions will be notified by the Department of Personnel Administration.

Further, it is recommended that appointing authorities confirm that candidates selected for appointment understand the smoking prohibition and consequences of violation. They may wish to have appointees acknowledge notification in writing. A sample form might include the text of Ch. 41, sec. 101A (see item #1, above); and include the following, to be signed and dated:

"I understand that I am prohibited by law from smoking tobacco products, at any time, as long as I am employed by the (city/town of [blank]) as a (police officer/fire fighter), regardless of rank, and that I must be terminated if I smoke."

8. Why was the law enacted and this rule adopted?

Police officers and fire fighters are eligible for special retirement benefits for impairment of health due to hypertension or heart disease, under the provisions of MGL Ch. 32 sec. 94, known as the "Heart Law." Tobacco smoking has been identified as a contributing risk factor in heart disease and hypertension; and heart disease is a leading cause of disability retirement among public safety personnel. The legislature has determined that henceforth employment in positions with Heart Law benefits will not be available to persons who by smoking increase their own risk of heart disease and hypertension.

9. Where should specific questions be addressed?

The staff of two offices of the Department of Personnel Administration are available to answer questions: the Pension Reform Program, at (617) 727-8097; and the Office of Legal Counsel, at (617) 727-3770.



The Commonwealth of Massachusetts

*Department of Personnel Administration
One Ashburton Place, Boston, Ma. 02108*

MICHAEL S. DUKAKIS
GOVERNOR

DAVID A. HALEY
PERSONNEL ADMINISTRATOR

Dear Police Service Appointing Authority:

Please be advised that in accordance with the provisions of Chapter 697, Section 117 of the Acts of 1987 no person who smokes any tobacco product is eligible for appointment as a Police Officer ... from the eligible list established on June 7, 1988 and no person appointed from that list shall continue in such office or position if such person thereafter smokes any tobacco products.

As soon as computer capabilities allow, this prohibition will be printed on the interview notice mailed to each applicant. Until that time, please insure that a copy of the enclosed letter is provided to all applicants.

I appreciate your cooperation. If you have any questions, please call Howard Lebowitz, Manager of Audit and Compliance, at 727-4917, extension 392.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine Kent", written over a horizontal line.

Christine Kent, Director
Bureau of Local Government Services

CK
Enclosure

NOTICE

To Police Officer Candidates

Please be advised that in accordance with the provisions of Chapter 697, Section 117 of the Acts of 1987, no person who smokes any tobacco products shall be eligible for appointment as a Police Officer from the eligible list established June 7, 1988, and no person appointed from that list shall continue in such office or position if such person thereafter smokes any tobacco products.



